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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

In re F. K., a Person Coming Under
the Juvenile Court Law.

SAN JOAQUIN COUNTY HUMAN SERVICES
AGENCY,

Plaintiff and Respondent,

v.

F. K., SR.,

Defendant and Appellant.

C069577

(Super. Ct. No. J05625)

F. K., Sr., the father of the minor F. K., appeals from the juvenile court's dispositional orders denying reunification services. (Welf. & Inst. Code,¹ §§ 361.5, subds. (b)(12), (e)(1), 395.) Father contends the order denying reunification services was an abuse of discretion. We affirm.

¹ Undesignated statutory references are to the Welfare and Institutions Code.

BACKGROUND

F. K. was born in June 1996. He lived with father, who had raised him on his own since the age of two. Father has 1984 convictions for rape by force or fear, forcible oral copulation of a child under 14 years old, robbery, and a 1998 misdemeanor conviction for making criminal threats. In December 2010, father was arrested on charges of first degree robbery, criminal threats, burglary, petty theft with a prior theft conviction, and felon in possession of a firearm. The 14-year-old minor was left home by himself as father had no one who could care for him. There was no food in the home other than a package of ramen and two eggs. The minor was placed in protective custody by Children's Protective Services.

In January 2011, the San Joaquin County Human Services Agency (agency) filed a dependency petition alleging jurisdiction over the minor pursuant to section 300, subdivisions (b) (failure to protect) and (g) (no provision for support). The minor was released to mother's custody shortly thereafter.²

The minor told a social worker that father is very nice to him and he would not change a thing. Father takes Xanax to calm down and is easily irritated if he does not take it.

² Mother previously was restricted to supervised visitation with the minor and had a substantiated allegation of neglect against the minor's half sibling. She is not a party to this appeal.

In a tearful interview at the county jail, father reported that he needed a gun after being robbed at gunpoint two months earlier. Father went to the Big 5 in Lodi and asked to see a gun; he then took the one the clerk showed him and ran off. He had stopped taking Xanax at the time of the robbery because he runs out of it at the end of the month. He is addicted to the drug, and his behavior changes when he stops taking it.

Father told the social worker his son was everything to him. Due to mother's neglect and abuse, father has raised the minor by himself since he was two. Since he gets only \$115 a month in food stamps, father runs low on food by the end of the month. He gets cash aid and SSI, but not enough to cover rent and other items.

The March 2011 jurisdiction and disposition report noted the minor did not attend school regularly while living with father and had a .250 grade point average. The social worker requested victim witness funding for the minor to get counseling to address the emotional problems caused by growing up in an environment of severe deprivation.

While mother had a history of substance abuse and child neglect, she was maintaining a clean home full of children from her current marriage. The report recommended awarding custody to mother and dismissing the dependency.

Police reports from father's charged offenses were appended to the jurisdiction and disposition report. According to two Big 5 employees, father entered the store and asked to see shotgun ammunition. When that was produced, father then asked

to see a shotgun. Father took a shotgun and a gun case and left the store. A store manager confronted father in the parking lot; father told the manager he was going to load the shotgun and kill him if he did not stop following him. Father then got into a pickup truck and looked like he was loading the shotgun. After police apprehended him, father admitted taking the gun.

The juvenile court sustained the petition in April 2011. A May 2011 supplemental report related that mother and her husband had completed various programs mandated by the criminal courts and appeared to have turned around their lives. The report recommended mother and her husband retain custody with family maintenance services. The social worker advised no services for father due to the length of his impending incarceration, his tendency to commit violent crimes, and the minor's age.

In July 2011, the agency filed a supplemental petition (§ 387) seeking the minor's removal from mother, alleging that his grades had dropped to all F's and mother and her husband tested positive for methamphetamine. Father and mother submitted to jurisdiction and mother waived reunification services. The juvenile court sustained the supplemental petition and set a contested dispositional hearing for father.

Christopher Holden, an agency intake social worker, testified at the hearing. He recommended denying services because father was in custody, but admitted father's trial had not yet taken place. Holden was troubled by father's criminal charges, his failure to provide for the minor, and father's pattern of behavior.

The minor told Holden he supported reunification services for father. He believed the minor understood what services were and why they were needed in a dependency action. The minor visited father four times in jail. The visits were "good" and the minor reacted well.

The minor's permanent plan was for long-term foster care. Visits should continue because the minor appeared to enjoy them. The minor would not be harmed by denying services because he was likely to be 18 by the time father was released from custody.

The minor testified that his visits with father in jail were "good." He wanted to continue with visits and wanted the agency to provide "classes" to father. If father were out of custody tomorrow, minor would like to live with him.

The juvenile court bypassed reunification services pursuant to section 361.5, subdivisions (e)(1) and (b)(12). In support of its ruling, the juvenile court found that father was facing a potentially lengthy incarceration. While the minor clearly loved his father, reunification services were not in the minor's best interests because it would give the minor false hope. The court also noted this was not an "adoption case," and father could file a petition to modify (§ 388) if he prevailed in his criminal case.

DISCUSSION

Father contends the juvenile court erred in bypassing reunification services pursuant to section 361.5, subdivisions (e)(1) and (b)(12). We disagree.

The juvenile court may deny a parent reunification services under certain circumstances. (§ 361.5, subd. (b).) One of those circumstances is where the parent has been convicted of a violent felony. (*Id.*, subd. (b)(12).) In such a case, the court may not order services unless it finds, by clear and convincing evidence, that reunification is in the best interests of the minor. (*Id.*, subd. (c).)

Father admits that subdivision (b)(12) applies to him because of his convictions for robbery and forcible rape, both violent felonies. (Pen. Code, § 667.5, subd. (c)(3), (c)(9).) He argues that it was an abuse of discretion to deny services because services were in the minor's best interests.

We review the denial of services under section 361.5, subdivision (c) for abuse of discretion. (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 523-524.) "Once it is determined one of the situations outlined in [section 361.5,] subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources. [Citation.]" (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.) "The burden is on the parent to change that assumption and show that reunification would serve the best interests of the child." (*In re William B.* (2008) 163 Cal.App.4th 1220, 1227.)

"The purpose of imposing a 'best interest of the child' standard 'is to maximize a child's opportunity to develop into a stable, well-adjusted adult.'" [Citation.] Appropriate factors for the juvenile court to consider when determining

whether a child's best interest will be served by pursuing reunification include: (1) the 'parent's current efforts and fitness as well as the parent's history'; (2) '[t]he gravity of the problem that led to the dependency'; (3) '[t]he "strength of relative bonds between" the dependent child and "both parent and caretakers"' ; and, '[o]f paramount concern[;]' (4) 'the child's need for stability and continuity.' [Citation.]" (*In re D.F.* (2009) 172 Cal.App.4th 538, 547, italics omitted.)

Father was facing the strong possibility of a lengthy prison term. He was charged with two serious or violent felonies, criminal threats and robbery, plus two additional felony charges. His criminal record includes two violent felony convictions, potentially subjecting him to a three strikes sentence of 25 years to life in state prison. The police reports identify two witnesses to the charged offenses, and father apparently confessed to the police that he stole the shotgun. Although father was not yet convicted of the charged crimes, it was proper for the juvenile court to consider the very real possibility of his being subject to significant incarceration.

While father and the minor loved one another, ordering services at this time was not in the minor's best interests. Given the minor's age and the likelihood that father would be subject to lengthy incarceration, reunification services at this point ran the risk of harming the minor by giving him a sense of false hope.

The juvenile court's order does not threaten the minor's relationship with his father. The court noted that if father was successful in his criminal case he could seek services through a petition to modify (§ 388). Termination of parental rights was not part of the agency's plan, and the juvenile court favored continued visitation during father's incarceration. It was not an abuse of discretion for the juvenile court to conclude that father did not carry his burden of showing that reunification services were in the minor's best interests.

Since the juvenile court did not err in bypassing services pursuant to section 361.5, subdivision (b)(12), we do not consider father's contentions regarding section 361.5, subdivision (e). (*In re Jasmine C.* (1999) 70 Cal.App.4th 71, 76 [if the juvenile court properly denied services on any ground raised below, appellate court need not consider whether other grounds relied on by the court are also supported].)

DISPOSITION

The juvenile court's dispositional orders are affirmed.

ROBIE, Acting P. J.

We concur:

BUTZ, J.

MURRAY, J.